

Federal Court



Cour fédérale

**Date: 20260105**

**Docket: IMM-27908-25**

**Citation: 2026 FC 1**

**Ottawa, Ontario, January 5, 2026**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**MIHRET KIDANEMIHRET TEKULU  
BEMNET BEYENU DANIEL**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**ORDER AND REASONS**

[1] The Applicants, Mihret Kidanemihret Tekulu and Bemnet Beyenu Daniel, bring a motion for a stay of their removal from Canada to Sweden, scheduled to take place on January 6, 2026.

[2] The Applicants request that this Court stay their removal from Canada pending the disposition of an underlying application for leave and judicial review of a decision made by an officer of Immigration, Refugees, and Citizenship Canada (“IRCC”), dated December 15, 2025,

to refuse Applicants' permanent residency application that they made based on humanitarian and compassionate grounds.

[3] For the reasons that follow, I will not stay the Applicants' removal. I find that the Applicants have failed to meet the tri-partite test required for such a stay.

I. **Facts and Underlying Decisions**

[4] The Applicants are a married couple that have citizenship in both Eritrea and Sweden.

[5] Around 2006, the couple claimed and received refugee status in Sweden due to the religious persecution they faced in Eritrea. The Applicants received their Swedish citizenship and resided in Sweden for approximately eight years. During that time, the Applicants submit — but do not provide any evidence — that they experienced discrimination, found it difficult to integrate, and discovered that one of the alleged perpetrators who had assaulted the Principal Applicant while they were in Eritrea, also lived in Sweden.

[6] In April 2014, due to their dissatisfaction with life in Sweden, the Applicants entered Canada and presented false passports. They proceeded to make a refugee claim where they failed to disclose that they had Swedish citizenship.

[7] On November 17, 2015, the Applicants were granted refugee status. On September 26, 2018, this status allowed the Applicants to obtain permanent residency.

[8] On December 7, 2021, IRCC revealed the Applicants' misrepresentation through a report submitted pursuant to subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "IRPA"). In a decision dated November 1, 2022, the Refugee Protection Division determined that this misrepresentation vacated the Applicants' refugee status.

[9] On January 7, 2023, a deportation order was issued against the Applicants. In response, on July 30, 2024, the Applicants submitted an application for a Pre-Removal Risk Assessment ("PRRA"). On November 28, 2023, the Applicants also applied for permanent residency based on humanitarian and compassionate grounds.

[10] On March 6, 2025, the Applicants' PRRA was refused. On the same day, a senior immigration officer of IRCC refused the Applicants' permanent residency application. On April 14, 2025, the Applicants sought leave and judicial review of the IRCC officer's decision. This was discontinued and the matter was remitted to another officer.

[11] The Applicants' made additional submissions in support of their application for permanent residency. They specifically noted that they would face hardship if they left Canada because, while in Canada, the Principal Applicant claims to have been a victim of a financial scam, and the Associate Applicant states that he was in a motor vehicle accident.

[12] In a letter dated December 15, 2025, another officer of IRCC refused the Applicants' request for permanent residency based on humanitarian and compassionate grounds (the "Redetermination"). The Applicants filed for leave and judicial review of the Redetermination.

[13] On December 15, 2025, the Applicants also received a direction to report their removal scheduled for tomorrow, January 6, 2026. The Applicants requested a deferral of the removal but, in a letter dated December 31, 2025, an officer of the Canadian Border Services Agency denied the Applicants' request for deferral.

## II. Analysis

[14] A stay is an extraordinary remedy, requiring the applicants to show special and compelling circumstances warranting judicial intervention (*Kis v Canada (Public Safety and Emergency Preparedness)*, 2023 CanLII 82086 at para 13).

[15] The tripartite test for the granting of a stay is well established: *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA) (“*Toth*”); *Manitoba (A.G.) v Metropolitan Stores Ltd.*, 1987 CanLII 79 (SCC), [1987] 1 SCR 110 (“*Metropolitan Stores Ltd.*”); *RJR-MacDonald Inc. v Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311 (“*RJR-MacDonald*”); *R v Canadian Broadcasting Corp*, 2018 SCC 5 (CanLII), [2018] 1 SCR 196.

[16] The *Toth* test is conjunctive, in that granting a stay of removal requires the applicant to establish: (i) a serious issue raised by the underlying application for judicial review; (ii) irreparable harm that would result from removal; and (iii) the balance of convenience favouring granting the stay.

A. *Serious Issue*

[17] In *RJR-MacDonald*, the Supreme Court of Canada established that the first stage of the test is to conduct an extremely limited review of merits of the case (at 314). Indeed, the Federal Court of Appeal has cautioned against a review of the merits at such a preliminary stage and specified that the threshold is low (*Turbo Resources Ltd v Petro Canada Inc (CA)*, 1989 CanLII 9512 at 469 (FCA); *North American Gateway Inc v Canadian Radio-Television and Telecommunications Commission*, 1997 CanLII 26672 at 159 (FCA)).

[18] On this first prong of the tri-partite test, the Applicant submits that the Redetermination is unreasonable. Specifically, the Applicants submit that the officer fettered their discretion by placing undue weight on the Applicants' misrepresentation, misapprehended the Applicants' request in the alternative for temporary resident visas, and failed to give proper consideration for the factors weighing in favour of granting permanent residency for the Applicants.

[19] The Respondent submits that the Applicants' challenges to the Redetermination amount to an impermissible request to reweigh the evidence (*Khan v. Canada (Citizenship and Immigration)*, 2020 FC 202). The Respondent highlights how, in the Redetermination, the officer considered each of the Applicants' arguments. It is the Respondent's position that the Redetermination was transparent about the weight it gave to each factor.

[20] In my view, the Applicants' submissions, when read charitably, narrowly pass the threshold of establishing that there is a serious issue. Their claims, on their face, appear to

merely disagree with the weight the Redetermination allocated to their submission. Still, their claims are specific and particularize aspects of the Redetermination and are neither frivolous nor vexatious.

B. *Irreparable Harm*

[21] At the second stage of the test, applicants are required to demonstrate that irreparable harm will result if relief is not granted. Irreparable harm does not refer to the magnitude of the harm; rather, it is a harm that cannot be cured or quantified in monetary terms (*RJR-MacDonald* at 341). Applicants must provide this type of harm at convincing level of particularity as to satisfy this Court on a balance of probabilities that the harm is not speculative (*Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 at para 31).

[22] The Applicants submit that their removal would undermine the purpose of the Redetermination and render it nugatory (*Pimentel Dos Santos v Canada (Citizenship and Immigration)*, 2022 FC 765 (“*Pimentel*”); *Kambasaya v Canada (Citizenship and Immigration)*, 2021 FC 664). Additionally, the Applicants submit that their removal would mean the loss of their community connections, financial hardships related to selling their house and vehicle, affect their business in Canada, and interrupt alleged legal proceedings associated with the investigations into the financial scam affecting the Principal Applicant and the motor vehicle accident the Associate Applicant experienced.

[23] I disagree with the Applicants. The Applicants will not face any irreparable harm upon their removal to Sweden, a safe and democratic country where they previously lived for the better part of a decade.

[24] Contrary to the Applicants' submissions relying on *Pimentel*, applicants are not entitled to a stay of removal simply by raising a serious issue with a decision for permanent residence based on humanitarian and compassionate grounds. In *Pimentel*, Justice Norris found that the applicants raised two "clearly arguable" issues with a negative decision on their permanent residency based on humanitarian and compassionate grounds that gave rise to a real probability of remedial injustice if the removal were not stayed (at para 24). This is not the case here where the allegations the Applicants raised against the underlying decision—at best—only narrowly constitute a serious issue. Additionally, *Pimentel* involved applicants that had not previously submitted a refugee claim or benefited from this Court's review of the decisions pertaining to their status in Canada. This differs from the Applicants in this case, who have benefitted from refugee claims, PRRA applications, two determinations based on humanitarian and compassionate grounds, and a judicial review.

[25] I agree with the Respondent that it is well established that removing individuals from Canada while they have outstanding leave applications or other litigation does not constitute irreparable harm (*Akyol v Canada (Minister of Citizenship and Immigration)*, 2003 FC 931; *Akiri v Canada (Citizenship and Immigration)*, 2025 CanLII 28412 at para 19 (FC); *Tsybulskiy v Canada (Public Safety and Emergency Preparedness)*, 2023 CanLII 115632 (FC); *Pagaduan v Canada (Citizenship and Immigration)*, 2021 CanLII 46936 (FC).

[26] The Applicants' application for leave and judicial review of the Redetermination will continue as they await the decision from a safe country. The Applicants alleged legal proceedings associated with a financial scam and the motor vehicle accident, for which there is no documentation in the record, may also continue. The Applicants have not shown that any specific harm will result from their removal, other than speculative impacts on their alleged litigation strategy.

[27] The other potential consequences that the Applicants submit may result from their removal are those that are inherent in the removal process. The Applicants had ample time to sell their assets and make arrangements for their relocation. The discrimination the Applicants allege to have experienced in Sweden is unsubstantiated by the record before me. Sweden is a safe, free, fair and democratic society, the harms alleged by the Applicants—even if they were substantiated—are not the type of compelling or special reasons that would warrant a stay (*Atwal v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 427 at para 16; *Karingithi v Canada (Citizenship and Immigration)*, 2024 CanLII 111144 (FC)).

C. *Balance of Convenience*

[28] The third stage of the test requires an assessment of the balance of convenience—a determination to identify which party will suffer the greater harm from the granting or refusal of the interlocutory injunction, pending a decision on the merits (*RJR-MacDonald* at 342; *Metropolitan Stores Ltd* at 129).

[29] The Respondent submits that section 48 of the IRPA demonstrates the public interest in the expeditious removal of individuals in accordance with Parliament's legislative design (*Dugonitsch v Canada (Minister of Employment & Immigration)*, [1992] F.C.J. No. 320, 1992 CarswellNat 199 at para 15).

[30] I agree that the public interest weighs in favour of removing individuals, like the Applicants, who are inadmissible to Canada. The Applicants' counsel submitted at the hearing that the Applicants did not "shy away" from admitting that they misrepresented themselves during their refugee claim. I do not find that this is a factor that weighs in favour of the Applicants given that they were only forthcoming once their misrepresentations were discovered and they had no choice but to admit they had lied.

[31] The Applicants cite my previous decision in *AB v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 1301, to state that both the Applicants' and the public interest would be furthered by preserving an immigration system that affords the opportunity to have each person's risks comprehensively assessed before removal (at para 31).

[32] However, I note that the Applicants have not been denied any assessment of the alleged risks they may face in Sweden. Indeed — despite misrepresenting themselves during the refugee claim process — they have been given full access to the Canadian immigration system. They submitted a refugee claim, appealed it and had it redetermined; they then submitted an application for a PRRA and a request for deferring their removal, which were both definitively decided in the negative; they further submitted an application for permanent residency based on

humanitarian and compassionate grounds, which was redetermined and they are now seeking a judicial review.

[33] More importantly, the Applicants will await the final pending judicial review related to their Canadian immigration status in Sweden, a safe, equitable, and democratic society.

[34] Ultimately, the Applicants have failed to meet the tri-partite test required for a stay of removal. For the Canadian immigration system to maintain legitimacy, the prompt removal of those who seek to undermine its core principles must be enforced. This motion is dismissed.

**ORDER in IMM-27908-25**

**THIS COURT ORDERS** that the Applicants' motion for a stay of their removal is dismissed.

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"Shirzad A."

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-27908-25

**STYLE OF CAUSE:** MIHRET KIDANEMIHRET TEKULU AND BEMNET  
BEYENU DANIEL v MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** JANUARY 5, 2026

**ORDER AND REASONS:** AHMED J.

**DATED:** JANUARY 5, 2026

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